

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHANET VIRUET,

16 Civ. 08327 (JGK)

Plaintiff,

ORDER

- against -

CITY OF NEW YORK et al.,

Defendants.

JOHN G. KOELTL, District Judge:

The plaintiff complains that she submitted a fifth request for an extension of time to file Objections to the Magistrate Judge's Report and Recommendation dated May 1, 2020, but the Court failed to act on that request before adopting the Report and Recommendation. The plaintiff therefore asks that the Court grant reconsideration of its ruling adopting the Report and Recommendation of the Magistrate Judge pursuant to Fed. R. Civ. P. 59(a) and 60 because the Court was under the impression that the plaintiff had failed to file any objections. In fact, as the defendants concede in opposing the motion for reconsideration, the plaintiff did file a request for a fifth extension of the time to file objections, but did so at 11:29 p.m., on the last day to file objections. The plaintiff had no right to expect that a fifth extension would be granted, and the filing of a request for an extension of time did not toll the time to file objections. Moreover, the defendants argue that the plaintiff's application for reconsideration contains misstatements, and, like other

submissions by the plaintiff, was sent to the Court by email but sent to counsel for the defendants by regular mail - a practice that results in a delay in the defendants' ability to respond to the plaintiff's numerous applications.

The defendants' arguments have a great deal of force. Nevertheless, it is clear that the Court adopted the Report and Recommendation while under the impression that the plaintiff had missed yet another deadline and had failed to file any objections to the Report and Recommendation. There is a preference for matters to be decided on the merits and not by default. If the plaintiff has any valid Objections to the Report and Recommendation, the Court should hear them if reasonably possible. Therefore, Court will grant the plaintiff's request for reconsideration pursuant to Fed. R. Civ. P. 59(a) and 60, and vacate its Order and Judgment dismissing this case. The plaintiff's time to file objections to the Report and Recommendation of Magistrate Judge Parker is extended to September 18, 2020. The Court notes that the plaintiff will have had four and half months to file Objections to the Report and Recommendation and no further extensions will be granted. Indeed, the plaintiff should have been prepared to file her objections before now. Therefore, the plaintiff should take care to assure that any objections are timely filed and that she serves a copy on defense counsel by email when they are filed. The time for the defendants to respond to any objections is October 10, 2020. The

time for any reply is October 12, 2020. The Court notes that, although a notice of appeal has been filed, this Court retains jurisdiction to decide a motion for reconsideration. See Fed. R. App. P. 4(a)(4). The Chambers will mail a copy of this Order to the pro se plaintiff at 90 Washington Street #24C, New York, NY 10006.

SO ORDERED.

**Dated: New York, New York
September 2, 2020**

/s/ John G. Koeltl
John G. Koeltl
United States District Judge